

137 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

PacifiCorp	Docket Nos. ER11-3865-000 ER11-3865-001
Pacific Gas & Electric Company	ER11-3911-000
California Independent System Operator Corporation	ER11-4075-000

ORDER ON AGREEMENTS GOVERNING THE
CALIFORNIA-OREGON INTERTIE

(Issued November 21, 2011)

1. In these proceedings, we have been presented with two different versions of the second amended Owners Coordinated Operation Agreement (OCA), one filed by PacifiCorp that includes certain agreed-upon changes and some additional disputed changes, and another filed by Pacific Gas and Electric Company (PG&E) that includes only the agreed-upon changes. For the reasons set forth below, we accept the second amended OCA filed by PG&E in Docket No. ER11-3911-000, and reject the version filed by PacifiCorp in Docket Nos. ER11-3865-000 and ER11-3865-001. We also accept the revised California-Oregon Intertie Path Operating Agreement (POA) filed by California Independent System Operator Corporation (CAISO) in Docket No. ER11-4075-000.

I. Background

A. The Owners Coordinated Operation Agreement

2. The California-Oregon Intertie (COI) is formed by two 500 kV AC lines (Pacific AC Intertie), built in 1967, and the 500-kV AC California-Oregon Transmission Project (COTP), built in 1993. The COI is used in conjunction with intertie facilities in Oregon and Washington to transfer electricity between the Pacific Northwest and central

California.¹ A 47-mile segment of the easternmost of the two Pacific AC Intertie lines, between the Malin substation in southern Oregon and a point in northern California, known as Indian Spring, is owned by PacifiCorp. PG&E owns the remaining 47 miles of this line, from Indian Spring south to PG&E's Round Mountain substation. Western Area Power Administration (Western) owns the westernmost Pacific AC Intertie line between the Malin and Round Mountain substations. The Transmission Agency of Northern California (TANC) owns a majority interest in, and is the project manager of, the COTP, which extends from the Captain Jack substation in southern Oregon to the Olinda substation in northern California.

3. In 1993, when the COTP was added to the Pacific AC Intertie to form the COI, the parties entered into the Coordinated Operation Agreement which provided for coordinated planning and operation of the jointly owned COI facilities, including coordinated efforts to maintain and enhance transfer capability.² The Coordinated Operation Agreement was set to expire by the end of 2004. This expiration date necessitated a complete re-opening and negotiation of a successor agreement to continue the coordinated operation of the three-line system, and to accommodate the possibility that the three COI lines may be in more than one balancing authority area, such as those of CAISO and Sacramento Municipal Utility District (SMUD).³ Commission staff convened a series of technical conferences after which the parties conducted extensive negotiations. As a result, several offers of settlement were filed, which were approved by the Commission.⁴ Included in those settlements were the OCOA and the new POA.

4. The OCOA governs coordinated operation, maintenance and planning of the lines as a single system, including coordinated efforts to maintain and enhance transfer capability, determining and allocating available capacity, and sharing available capacity during curtailments.⁵ The OCOA also specifies that the coordination of operations of the

¹ See *Cal. Energy Comm'n v. Bonneville Power Admin.*, 902 F.2d 1298, 1302 (9th Cir. 1990); *Pacific Gas and Elec. Co. v. FERC*, 746 F.2d 1383, 1384 n.1 (9th Cir. 1984).

² The parties to the Coordinated Operation Agreement were PG&E, Southern California Edison Company (SoCal Edison), San Diego Gas & Electric Company (SDG&E), and the COTP Participants (Western, TANC, Carmichael Water District, the California City of Redding, PG&E, San Juan Suburban Water District, and their successors and assigns).

³ SMUD is a member of TANC.

⁴ See *Pacific Gas and Elec. Co.*, 109 FERC ¶ 61,255 (2004).

⁵ The original parties to the OCOA were PG&E, TANC, and Western. They were responsible for coordinating the planning and operation of the three-line intertie system.

three-line system be performed by a single path operator, currently CAISO, under the POA. Coordination of these three lines also requires coordination between the balancing authority areas south of the California-Oregon border in which these lines are located, those operated by CAISO and SMUD.⁶

5. Prior to 2007, PG&E, had the right to use all capacity on PacifiCorp's Malin-Indian Spring segment of the eastern Pacific AC Intertie, in exchange for an annual payment and the performance of all necessary operations and maintenance for that segment.⁷ Consequently, because PacifiCorp did not have operational control of any portion of the line, PacifiCorp was not a party to the OCOA. In 2007, PacifiCorp proposed to terminate the Capacity Agreement. The PacifiCorp proposal was the subject of litigation and extensive settlement procedures, resulting in a number of new or revised agreements, including the amended OCOA (2007 Settlement).⁸

6. The 2007 Settlement provided that, beginning January 1, 2012, PacifiCorp will acquire a share of the 1,600 MW of the Round Mountain-to-Malin segment that is currently under PG&E's control, which will begin with 300 MW and gradually increase to 800 MW as of January 1, 2018. Thus, in order to ensure that the operation of the three-line COI continues to be coordinated among all parties with capacity, the 2007 Settlement provided that PacifiCorp be added as a Party to the OCOA beginning January 1, 2012. Specifically, under section 5.3 of the 2007 Settlement, the parties agreed to commence negotiations to add PacifiCorp as a party no later than January 1, 2009, and to execute amended versions of the agreement by June 1, 2011. Furthermore, the 2007 Settlement provided that, to the extent the parties are unable to reach agreement, PacifiCorp or any OCOA Party could unilaterally propose amendments to the OCOA to become effective January 1, 2012, and request that the Commission resolve the disputed issues.

B. The Integrated Balancing Authority Area Proceeding

7. In 2008, the Commission approved CAISO's proposed revisions to its existing tariff and the Market Redesign and Technology Upgrade Tariff (MRTU) to establish an

⁶ Effective May 1, 2011, the COTP is physically operated in the Balancing Authority of Northern California.

⁷ The terms and conditions for the use of such capacity was administered under the Agreement for the Use of Transmission Capacity (Capacity Agreement).

⁸ See *PacifiCorp*, 121 FERC ¶ 61,278 (2007).

Integrated Balancing Authority Area (IBAA).⁹ Among other things, the IBAA Proposal implemented locational marginal pricing and full network model of the transmission system to improve dispatch efficiency.¹⁰ According to CAISO, its inability to verify the location of external resources stemmed from California's and the Pacific Northwest's electricity transmission infrastructure and the fact that the COTP is not part of the CAISO-controlled grid. Thus, the CAISO focused the IBAA Proposal on SMUD and Turlock Irrigation District (Turlock), the two independent but interconnected balancing authority areas that draw power from the Pacific Northwest over the COTP. CAISO was concerned that it would be unable to model power flows and calculate locational marginal prices accurately for these entities.

8. CAISO's proposed solution involved combining SMUD and Turlock into a single IBAA for purposes of the full network model and then using a "single hub" approach whereby one default proxy price would be selected for all interconnection points. Thus, all imports into the CAISO system from the SMUD/Turlock IBAA would be priced as if they originated at the Captain Jack substation in Oregon. Conversely, all exports from the CAISO system to the SMUD/Turlock IBAA would be priced at a hypothetical "SMUD hub." Protestors, including TANC and Western, contended that the IBAA Proposal violated the OCOA by charging for parallel flows on other COI lines while ignoring parallel flows on the COTP.¹¹

9. The Commission found that the IBAA Proposal established only the rates, terms and conditions for sales in CAISO's market and did not charge for congestion that occurs over the COI, including the COTP.¹² The Commission concluded that the OCOA did not concern how energy is priced once it entered the CAISO-controlled grid and therefore

⁹ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 (2008) (IBAA Order) (conditionally accepting CAISO's proposed tariff revisions with certain modifications), *reh'g denied*, 128 FERC ¶ 61,103 (2009) (IBAA Rehearing Order), *aff'd sub nom. Transmission Agency of Northern California v. FERC*, 628 F.3d 538 (D.C. Cir. 2010) (TANC), *petition for cert. denied, Turlock Irrigation District v. Federal Energy Regulatory Comm'n*, 180 L. Ed. 2d 83, 779 U.S.L.W. 3697 (June 13, 2011).

¹⁰ CAISO, Amendments to MRTU Tariff Provisions, at 1, Docket No. ER08-1113-000 (June 17, 2008) (IBAA Proposal). Under a locational marginal price rate design, energy prices vary by location and time in order to reflect the cost of energy, including the cost of transmission losses and congestion, at each location on the CAISO-controlled grid.

¹¹ IBAA Order, 124 FERC ¶ 61,271 at P 226.

¹² *Id.* P 246.

presents no conflict with the IBAA Proposal.¹³ In reaching this conclusion, the Commission examined the interplay between section 5 and section 8.4 of the OCOA.¹⁴ Viewing section 5 as denoting the scope of the OCOA, the Commission concluded that the prohibition on charges in section 8.4 was limited to the coordinated operation and maintenance of the Pacific AC Intertie and COTP.¹⁵ The Commission concluded that the OCOA only prohibited the parties to the OCOA from charging each other for unscheduled use of another's lines associated with parallel flows and did not reach charges for voluntary interchange transactions that impact the CAISO system. Similarly, in denying rehearing, the Commission emphasized that the IBAA Proposal only applies to scheduled transactions that impact the CAISO-controlled grid.¹⁶

10. The Commission's decisions in the IBAA Orders were upheld by the Court of Appeals.¹⁷ The Court rejected petitioners contention that section 8.4 reflects the Parties' intent to shield one another from charges that might otherwise be imposed as a result of their coordinated operations, even where the power flows through the CAISO-controlled grid, finding that on its face the OCOA does not concern the manner in which CAISO

¹³ *Id.* P 247.

¹⁴ Section 5 of the OCOA states:

This Agreement governs the coordinated operation of the [Pacific AC Intertie] and COTP. It is the intent of the Parties to maintain the System as coordinated facilities to benefit its Transfer Capability. . . no Party provides or shall be required to provide any transmission or other electric service to another Party under this Agreement.

Section 8.4 of the OCOA in pertinent part states:

The System shall be operated as a coordinated three-line transmission system. No Party shall be charged any rate and PG&E shall not be charged any transmission loss for any power, which flows over the System . . . Except to the extent necessary for sharing Curtailments, no Party shall have a right under this Agreement to have any of its power delivered on or otherwise have the use of transmission facilities owned by another Party.

¹⁵ IBAA Order, 124 FERC ¶ 61,271 at P 248-252.

¹⁶ IBAA Rehearing Order, 128 FERC ¶ 61,103 at P 21.

¹⁷ TANC, 628 F.3d 538, 546-49.

sets rates in its own market.¹⁸ According to the Court, although section 8.4 refers broadly to "any rate" for power flowing over the system, the reach of this provision cannot extend beyond the scope of the OCOA itself, which is stated in section 5.¹⁹ The Court found that the IBAA Proposal does not permit a *party* to the OCOA to charge another party for flows over the three-line system.²⁰ Thus, the Court agreed that the Commission was only regulating CAISO's actions and the manner in which it calculated rates on the CAISO-controlled grid.

II. The PG&E, PacifiCorp and CAISO Filings

11. On June 23, 2011, in Docket No. ER11-3865-000, PacifiCorp filed an unexecuted second amended OCOA.²¹ In addition to the agreed-upon changes, PacifiCorp's proposal includes revisions concerning unscheduled flows. On June 28, 2011, in Docket No. ER11-3911-000, PG&E filed its unexecuted second amended OCOA which includes only the agreed-upon changes.

12. PacifiCorp and PG&E state that, through extensive negotiations, they have agreed to changes necessary to add PacifiCorp as a party to the amended OCOA, including definitional corrections and updates to certain provisions. Specifically, the parties agreed to amend section 7.1 of the OCOA to provide that PG&E, Western, and the COTP Participants each shall designate one voting representative to serve on both the administrative committee and the engineering and operations committee, while PacifiCorp shall designate a non-voting representative to serve on each of the two committees.

13. PacifiCorp also agreed to similar termination rights as the other parties to the second amended OCOA, which can occur two years after a written notice is given to the administrative committee. In addition, if the administrative committee has not selected a path operator for the COI pursuant to the agreement, then three of the four representatives

¹⁸ *Id.* at 548.

¹⁹ *Id.*

²⁰ *Id.* (emphasis added). According to the Court, petitioners acknowledged that "[t]he [OCOA] prohibits *the Parties* from assessing *each other* for 'any' such power flows." *Id.* (citing Petitioners Reply Br. 8.).

²¹ On June 28, 2011, in Docket No. ER11-3865-001, PacifiCorp filed an amendment to its filing which changed one sentence in section 4.13 of the second amended OCOA. PacifiCorp's corrected section 4.13 is identical to the version of that section filed by PG&E.

of the administrative committee can agree to give notice of termination of the second amended OCOA; in this case, termination would occur one year after such notice is given. PG&E is required to cast its vote in the committee meetings only after consultation with PacifiCorp's non-voting representative, as set forth in Appendix B. Other Changes agreed to by all the parties include revisions: (1) deemed necessary due to potential ambiguity created in the terms by the passage of time, evolution of the market or other reasons; (2) to update the history of the development of the OCOA; (3) to clarify the ownership of the Pacific AC Intertie; (4) to remove outdated provisions; (5) to update reliability requirements to reflect necessary compliance with applicable North American Electric Reliability Corporation or Western Electricity Coordinating Council reliability standards; and (6) other miscellaneous changes.

14. However, the parties state that they have not been able to reach an agreement on one issue – language proposed by PacifiCorp, supported by TANC and Western, regarding unscheduled flows. PG&E objects to this language. Accordingly, PacifiCorp and PG&E have filed competing, unexecuted versions of the revised OCOA. PG&E's revised OCOA contains all of the changes agreed to by the parties²² and is supported by CAISO. PacifiCorp's revised OCOA contains all of those provisions, plus the disputed provisions regarding unscheduled flows.

15. PacifiCorp explains that, since the inception of the original agreement governing coordinated operation of the COI,²³ the parties have recognized that a consequence of operating the facilities in an integrated and coordinated fashion is that any power scheduled on any one of the three lines will necessarily result in power flows over the entire transmission path of the three-line system. PacifiCorp states that these power flows are typically referred to as “unscheduled,” “parallel,” or “loop” flows, and that coordinated operations simply cannot be possible without permitting them. PacifiCorp contends that, beginning with the original Coordinated Operation Agreement, the owners of these interconnected facilities did not intend to charge each other for unscheduled flows or the effects of unscheduled flows on another party's facilities. PacifiCorp states that the acknowledgement and acceptance of the unscheduled flows at no cost was an economic and operational burden accepted by the owners in exchange for obtaining the

²² PacifiCorp, TANC and Western represented to PG&E that they concur with the revisions to the OCOA proposed in PG&E's Filing. PG&E June 23, 2011 Filing, Transmittal Letter at 7.

²³ As discussed above, the proposed revised OCOA is the fourth version of the agreement governing the coordinated operations of the COI, with the original Coordinated Operation Agreement created in 1993, the OCOA negotiated in 2004, and again re-negotiated and revised in 2007. *See infra* P 3-6.

benefits of higher transfer capability, capacity sharing, and coordinated curtailment sharing.²⁴

16. PacifiCorp states that it, TANC and Western believe it is necessary to expressly recognize this longstanding agreement in the revised OCOA. Specifically, PacifiCorp proposes a new recital in section 2.12, and revisions to section 5 – Scope of Agreement and section 8.4 – Coordination Rights of Parties, recognizing that using a party’s transmission rights will result in unscheduled flows, and that unscheduled flows do not constitute transmission service, irrespective of the control area to which the power is to be delivered. The proposed changes state that: (1) no party will be charged for unscheduled flows, including any charges for congestion, transmission losses, and/or marginal losses; (2) the rate prohibition includes parallel flow affects on other transmission facilities that underlie, interconnect or support the three-line COI system; and (3) no third party may impose any such charges on behalf of any party.²⁵

17. Thus, PacifiCorp claims that the additional amendments are needed “to provide further necessary clarity to existing provisions” and to expressly recognize a longstanding agreement regarding the OCOA’s prohibition against charging “any rate...for any power that flows over the system.”²⁶

18. PacifiCorp and PG&E both request a waiver of the notice requirements set forth in section 35.3 of the Commission’s rules and regulations²⁷ to permit their filings to be made more than 120 days in advance of the proposed January 1, 2012 effective dates, in order to provide the Commission with as much time as possible to address the disputed issues. The parties also request consolidation of the two filings into one proceeding.

19. On July 19, 2011, in Docket No. ER11-4075-000, CAISO filed a second amendment to the POA. The filing adds PacifiCorp as a party and incorporates the changes agreed to by PG&E, Western, TANC and PacifiCorp as part of their negotiation of the OCOA. CAISO proposes that the second amended POA be made effective on January 1, 2012.

20. According to CAISO, the OCOA specifies the coordination of operations of the three-line system by a single path operator, currently CAISO. The POA provides CAISO

²⁴ PacifiCorp June 23, 2011 Filing, Affidavit of Bryan W. Griess at 11.

²⁵ *Id.* at 13-17.

²⁶ *Id.*, Transmittal Letter at 7.

²⁷ 18 C.F.R. § 35.3 (2011)

with the authority and mechanisms to carry out its responsibilities as path operator of the COI. As path operator, CAISO is responsible for determining available scheduling capability, and coordinating curtailments, maintenance, planned outages, and restoration of facilities to service to maximize that available scheduling capability and minimize reductions in operational transfer capability. PacifiCorp, TANC, Western and PG&E authorized CAISO to represent that they concur with the proposed changes to the POA. The changes contained in the CAISO filing mirror the changes filed by PG&E in Docket No. ER11-3911-000.

III. Notices of Filings and Responsive Pleadings

A. Notices

21. Notice of PacifiCorp's Filing in Docket No. ER11-3865-000 was published in the *Federal Register*, 76 Fed. Reg. 39,086 (2011), with interventions and protests due on or before July 14, 2011. Notice of PacifiCorp's amended filing was published in the *Federal Register*, 76 Fed. Reg. 39,862 (2011), with comments due on or before July 19, 2011. Timely motions to intervene were filed by Modesto Irrigation District (Modesto), SoCal Edison, Northern California Power Agency (NCPA), and SDG&E. Timely motions to intervene and comments in support of the filing were filed by TANC, Western, the City of Santa Clara, California, City of Redding, California and the M-S-R Public Power Agency (collectively Cities/M-S-R), Iberdrola Renewables, Inc (Iberdrola) and Powerex Corp. (Powerex). Timely motions to intervene and protests were filed by PG&E and CAISO. The California Department of Water Resources State Water Project (SWP) filed a motion to intervene out-of-time. PacifiCorp, TANC and Western filed a joint answer responding to the protests of PG&E and CAISO.

22. Notice of PG&E's Filing in Docket No. ER11-3911-000 was published in the *Federal Register*, 76 Fed. Reg. 39,862 (2011), with interventions and protests due on or before July 19, 2011. Timely motions to intervene were filed by Modesto, SoCal Edison, NCPA, SDG&E and Powerex. CAISO filed a timely motion to intervene and comments in support of the filing. Western and PacifiCorp filed timely motions to intervene and adverse comments. TANC and Cities/M-S-R filed timely motions to intervene and protests. SWP filed a motion to intervene out-of-time.

23. Notice of CAISO's Filing in Docket No. ER11-4075-000 was published in the *Federal Register*, 76 Fed. Reg. 45,242 (2011), with interventions and protests due on or before August 9, 2011. Timely motions to intervene were filed by SoCal Edison, NCPA, TANC, PacifiCorp, SWP, Modesto, Powerex and Cities/M-S-R. Comments were filed by Western. PG&E filed a motion to intervene out of time.

B. Comments and Protests

24. TANC and Western²⁸ filed comments in support of PacifiCorp's Filing. They argue that PacifiCorp's proposed language accurately reflects the original intent of the parties to the coordinated operation of the COI, and that leaving uncertainty as to whether charges for transmission congestion and losses may be assessed on unscheduled flows on the system would create significant problems in the future. TANC contends that the additional revisions do not expand the scope or affect the existing rights and obligations of the parties to the amended OCOA.²⁹ Iberdrola and Powerex also support the OCOA filed by PacifiCorp, arguing that PacifiCorp's revisions provide necessary clarity to the existing provisions of the OCOA.³⁰

25. PG&E and CAISO filed protests, arguing that PacifiCorp's proposed changes go beyond the changes necessary to add PacifiCorp as a party to the OCOA as contemplated by the 2007 Settlement and, therefore, are unnecessary and unsupported and should be rejected. CAISO disputes PacifiCorp's argument that it had the right under the 2007 Settlement to unilaterally propose amendments to the amended OCOA. According to CAISO, the 2007 Settlement only allows parties to submit amendments to include PacifiCorp as a party "and to make other, related and necessary changes." CAISO contends that PacifiCorp's proposed amendments are not related to or necessary to make PacifiCorp a party to the amended OCOA.

26. PG&E states that section 8.4 of the current OCOA already states that no party will be charged any rate for any power which flows over the COI system. PG&E contends that PacifiCorp and TANC failed to demonstrate that the disputed changes are needed. PG&E also disputes TANC's claim that these changes are necessary because there have been many regulatory and operational changes since the commencement of COTP service and its coordination with the Pacific AC Intertie in 1993. According to PG&E, the original Coordinated Operations Agreement and the OCOA recognized and addressed these changes.

²⁸ Western filed comments stating that it would agree to the second amended OCOA as filed by PacifiCorp, but would not agree to the second amended OCOA filed by PG&E. Western July 14, 2011 Comments at 7-8.

²⁹ TANC July 14, 2011 Comments at 7-8. Cities/M-S-R are members of TANC and filed joint comments supporting TANC's pleading. Cities/M-S-R July 14, 2011 Comments.

³⁰ Iberdrola July 19, 2011 Comments at 3; Powerex July 19, 2011 Comments at 6.

27. PG&E and CAISO contend that PacifiCorp's proposed changes amount to a collateral attack on the Commission's decisions approving the IBAA provisions in CAISO's tariff. According to these parties, in the IBAA proceeding, the Commission found that CAISO's IBAA proposal did not conflict with the OCOA because section 5 of the OCOA limited the scope of the OCOA to the joint operation of the three-line COI and that CAISO's IBAA pricing mechanism did not recover costs for congestion on the COI.³¹ PG&E argues that, in denying rehearing, the Commission reiterated that CAISO's IBAA proposal did not conflict with the OCOA because the proposed charges only applied to COTP transactions that include the scheduled use of the CAISO-controlled grid.³² PG&E notes that the Commission's decisions were upheld by the Court of Appeals.³³

28. PG&E and CAISO argue that adopting PacifiCorp's proposed changes would revive the issues already litigated in the IBAA proceedings.³⁴ They continue that this would lead to uncertainty and confusion regarding the ongoing validity of the Commission's IBAA orders and CAISO's authority to utilize or modify its pricing mechanisms in light of the OCOA, which could lead to future protests of CAISO pricing mechanisms. CAISO adds that if the proposed changes would preclude CAISO's IBAA pricing structure, they would amount to a revision to CAISO's tariff by PacifiCorp, which is impermissible under the Federal Power Act.³⁵ CAISO contends that the proposed changes serve no valid purpose.

29. Several parties, including TANC, Western and PacifiCorp filed adverse comments or protests to PG&E's Filing. Those parties argue that PG&E's version of the OCOA is not sufficient and does not comprise a complete resolution of the issues, and that the Commission should approve PacifiCorp's version. They contend that the changes proposed in PacifiCorp's Filing make necessary clarifications to ensure the rights and

³¹ PG&E July 19, 2011 Protest at 15-17; CAISO July 19, 2011 Protest at 12. *See also* IBAA Order, 124 FERC ¶ 61,271 at P 246-248.

³² PG&E July 19, 2011 Protest at 16-17 (citing IBAA Rehearing Order, 128 FERC ¶ 61,103 at P 254-260).

³³ *Id.* at 17 (citing TANC, 628 F.3d 538 at 546-49).

³⁴ *Id.* at 13; CAISO July 19, 2011 Protest at 14.

³⁵ CAISO is concerned that PacifiCorp's proposed changes may effectively reverse the Commission's approval of the IBAA pricing structure and to exempt COTP users from congestion charges in connection with imports and exports to the Northern California and Turlock IBAA that are scheduled on the CAISO's grid.

obligations of the parties to the predecessor agreements remain steadfast for continued and reliable operation of the system.

30. PacifiCorp, TANC and Western Filed a joint answer to the protests of PG&E and CAISO in PacifiCorp's Filing, arguing that since the OCOA does not affect pricing for transmission service under the CAISO tariff, allegations that PacifiCorp's Filing amounts to a collateral attack on the IBAA Orders are misplaced. The parties reiterate that the new language is needed to ensure that the existing parties and PacifiCorp, the new party to the OCOA, have a clear and common understanding of the terms bargained for in operating the COI as a coordinated and integrated system; specifically, the prohibition against charges for unscheduled flows. The parties also object to arguments that the 2007 Settlement allowed only for changes to add PacifiCorp as a party, contending that neither the 2007 Settlement nor the terms of the OCOA bars further changes.

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2011), the Commission will grant SWP's late-filed motion to intervene given its interest in these proceedings, the early stage of these proceedings, and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the joint answer filed by PacifiCorp, TANC and Western and will, therefore, reject it.

B. Commission Determination

33. As noted above, we have been presented with two different versions of the second amended OCOA. One version, filed by PacifiCorp, includes the same language as the PG&E Filing plus some additional disputed changes regarding unscheduled flows. The other version, filed by PG&E, includes only the uncontested changes. For the reasons set forth below, we reject the OCOA filed by PacifiCorp in Docket Nos. ER11-3865-000 and ER11-3865-001, and accept the version submitted by PG&E in Docket No. ER11-3911-000. We also accept the revised uncontested POA filed by CAISO in Docket No. ER11-4075-000.

34. First, we find that PacifiCorp's proposal is inconsistent with the Commission's findings in the IBAA Orders. In the IBAA Order, the Commission found that, contrary to TANC's assertions, CAISO's proposal would not charge for congestion that occurs over

the COI, but would allocate congestion costs associated with the impact of transactions on CAISO's own underlying 230 kV transmission system.³⁶ In addition, the Commission disagreed with TANC's arguments that the IBAA proposal violated section 8.4 of the OCOA, which states that "[n]o party shall be charged any rate...for any power, which flows over the System..."³⁷ The Commission found that the OCOA only prohibited the parties to the OCOA from charging each other for unscheduled use of another's lines associated with parallel flows and did not reach the IBAA proposal, which concerned CAISO's ability to set rates for voluntary transactions that impact its system.³⁸

35. However, PacifiCorp proposes changes to section 8.4 that would extend the prohibition against unscheduled flow charges beyond the COI facilities. PacifiCorp's changes to section 8.4 specify that the prohibition against unscheduled flow charges applies not only to power flowing over the system, but to unscheduled flows "over transmission facilities that underlie, interconnect, support or constitute the System." This new language is inconsistent with our determination in the IBAA Order because the Commission clearly stated that the prohibition on unscheduled flow charges only applies to the three-line COI.³⁹

36. Similarly, in the IBAA Order, we found that the OCOA only applied to the parties to that agreement. However, PacifiCorp's new language in section 8.4 would alter the application of the unscheduled flow prohibition and thus have it apply to third parties who are not signatories to the OCOA. The new section expressly states that "[s]uch rates [for unscheduled flow] shall not be charged by any Party or by any third party on behalf of any Party."⁴⁰ We find that PacifiCorp's proposal does not merely clarify the OCOA, but expands the terms and conditions of the agreement beyond the IBAA Orders, as upheld by the Court of Appeals.

37. Furthermore, we find that the entire OCOA was renegotiated in 2004 by the parties, including TANC, Western, CAISO and PG&E, in order to conform the agreement to the CAISO market design, and again in the 2007 Settlement. PacifiCorp's

³⁶ IBAA Order, 124 FERC ¶ 61,271 at P 246.

³⁷ *See infra* note 14.

³⁸ *See* discussion *infra* P 9. *See also* IBAA Order, 124 FERC ¶ 61,271 at P 251-252.

³⁹ As noted above, the Court of Appeals also found that section 8.4 of the OCOA cannot extend beyond the scope of OCOA itself. *See* discussion *infra* P 10.

⁴⁰ PacifiCorp June 23, 2011 Filing, section 8.4 (emphasis added).

proposed additions to section 8.4 of the OCOA appear to be a late attempt by some of the parties to re-negotiate old, settled issues that were not previously resolved in their favor. Specifically, TANC, who was a party to the original 1993 Coordinated Operation Agreement, could have made its argued intent explicit when the agreement was re-opened for renegotiation in 2004. Yet, it failed to do so.⁴¹ If TANC believed that the currently-proposed language reflects the parties' original intent, it could and should have made this position more explicit and requested these amendments to the OCOA in 2004 and in 2007.

38. We also find that PacifiCorp's proposal violates the 2007 Settlement. Section 5.3 of the 2007 Settlement provided that:

The parties to the OCOA and POA and PacifiCorp (1) shall commence good faith negotiations in an attempt to agree to further amendments to the OCOA and the POA to include PacifiCorp as a party to each agreement and to make other related and necessary changes no later than January 1, 2009, and shall execute the further amended OCOA and further amended POA by June 1, 2011. If mutual agreement cannot be reached, PacifiCorp or any party to the OCOA or the POA has the right to unilaterally propose amendments to the OCOA or the POA to become effective January 1, 2012, and to request that FERC resolve the disputed issues among the affected parties. Except as provided in [s]ection 5.4, nothing in this Settlement shall prevent existing parties to the OCOA or the POA from making further amendments to those agreements in accordance with the terms thereof, or shall prejudice any party's arguments on the appropriate OCOA governance structure. The current OCOA governance provisions shall continue in effect until further amended agreement is executed and becomes effective.

39. Under the terms of the 2007 Settlement, the parties and PacifiCorp are authorized to make amendments necessary to include PacifiCorp as a party to the OCOA, along with any related and necessary changes. We find that PacifiCorp's proposed changes are not necessary to include PacifiCorp as a party to the OCOA and therefore are inconsistent with the terms of the 2007 Settlement. Moreover, as CAISO argues, under the 2007

⁴¹ See TANC's Consolidated Comments, Docket No. ER04-693-001 (filed October 28, 2004) and TANC's Reply Comments, in Docket No. ER04-693-001 (filed November 2, 2004).

Settlement, only *existing* parties to the OCOA and POA are authorized to make further amendments to those agreements (i.e., any amendments beyond what is necessary to include PacifiCorp as a party to the OCOA). Because PacifiCorp is not an existing party to the current OCOA, PacifiCorp is not authorized to make any further amendments to the current OCOA.

40. Furthermore, we find that PacifiCorp has failed to meet its burden of establishing that its proposed changes are just and reasonable. Despite PacifiCorp's claims that its proposed language is needed now to prevent confusion, we find that PacifiCorp provides no evidence that the existing language has led to any confusion among the parties to the OCOA. In addition, we find PacifiCorp's claims amount to little more than unsupported speculation. We note that the provisions which PacifiCorp seeks to amend were part of the original Coordinated Operation Agreement and have governed operations for 18 years. PacifiCorp has failed to provide any evidence demonstrating that the current language in the OCOA has generated confusion or that a party has been subject to charges for unscheduled flows in contradiction to the OCOA.

41. We find that the revisions to the OCOA contained in PG&E's Filing and to the POA in CAISO's Filing meet the requirements of the 2007 Settlement, and are just and reasonable. PG&E's Filing includes all the agreed-upon amendments necessary to include PacifiCorp as a party to the OCOA. Therefore, we accept the revised OCOA filed by PG&E in Docket No. ER11-3911-000 and the revised POA filed by CAISO in Docket No. ER11-4075-000, effective January 1, 2012. The revised OCOA filed by PacifiCorp in Docket Nos. ER11-3865-000 and ER11-3865-001 is rejected.

42. Both PG&E and PacifiCorp requested a waiver of the notice requirements set forth in section 35.3 of the Commission's rules and regulations⁴² to permit their filings to be made more than 120 days in advance of the proposed January 1, 2012 effective dates, in order to provide the Commission with as much time as possible to address the disputed issues. We find that the parties benefit from a swift resolution of the disputed issues and no party is harmed by the early filing of these proposals. Therefore, we will grant these requests for good cause shown.

43. Finally, we deny PacifiCorp and PG&E's motions to consolidate because the Commission has previously found formal consolidation to be inappropriate in cases where the dockets at issue are not being set for hearing.⁴³ Here, we are able to resolve the

⁴² 18 C.F.R. § 35.3 (2011)

⁴³ See *Startrans IO, LLC*, 122 FERC ¶ 61,253 (2008) (finding formal consolidation inappropriate where a trial-type evidentiary hearing is not required to resolve common issues of law and fact and where consolidation will not ultimately result

issues on the basis of the record and find no need for a hearing. As a result, there would be no gains in administrative efficiency from consolidating the proceedings. Moreover, we note that Commission precedent establishes that the Commission retains control over the scope of its proceedings.⁴⁴

The Commission orders:

(A) The revised OCOA filed by PG&E in Docket No. ER11-3911-000 is accepted, effective January 1, 2012, as discussed in the body of this order.

(B) The revised POA filed by CAISO in Docket No. ER11-4075-000 is accepted, effective January 1, 2012, as discussed in the body of this order.

(C) The revised OCOA filed by PacifiCorp in Docket Nos. ER11-3865-000 and ER11-3865-001 is rejected, as discussed in the body of this order.

(D) The waivers requested by PG&E and PacifiCorp are granted, as discussed in the body of this order.

(E) PacifiCorp and PG&E's motions to consolidate are denied, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

in greater administrative efficiency); *Cal. Pub. Utils. Comm'n*, 132 FERC ¶ 61,047 (2010) (finding formal consolidation unnecessary where two related petitions were addressed simultaneously via a single Commission order and no hearing was ordered).

⁴⁴ See, e.g., *State of Cal. ex rel. Lockyer v. British Columbia Power Exchange Corp.*, 125 FERC ¶ 61,016, at P 32 (2008).

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